

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY
NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

DEC 17 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

GEOFFREY AARON HOWERTON,

Appellant.

2 CA-CR 2008-0151

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR-200601870

Honorable Delia Neal, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Amy M. Thorson

Tucson
Attorneys for Appellee

Mary Wisdom, Pinal County Public Defender
By Angela C. Poliquin

Florence
Attorneys for Appellant

E S P I N O S A, Judge.

¶1 After a jury trial, appellant Geoffrey Howerton was convicted of driving under the influence of an intoxicant (DUI) and aggravated driving with a blood alcohol concentration (BAC) of .08 or higher while his license was “suspended or restricted.” The trial court sentenced him to four months in prison on the latter conviction and imposed concurrent, four-year terms of probation for both convictions, to commence upon his release from prison. On appeal, Howerton challenges the court’s denial of his motion for a new trial. For the reasons below, we affirm.

¶2 On March 20, 2008, the jury returned the guilty verdicts outlined above. On April 1, 2008, Howerton filed a motion for new trial, alleging that the bailiff had improperly instructed the jury in response to their questions and that the jury was confused about the verdict forms. The court denied his motion, and this appeal followed.

¶3 We do not reach the merits of this appeal because, as the state correctly points out, Howerton’s motion for a new trial was untimely, and the trial court thus lacked jurisdiction to rule on it.¹ A motion for new trial must be made “no later than 10 days after the verdict has been rendered.” Ariz. R. Crim. P. 24.1(b); *see State v. Wagstaff*, 161 Ariz. 66, 70, 775 P.2d 1130, 1134 (App. 1988) (time limits on motions for new trial jurisdictional; motions not filed within ten days of verdict are without effect and their denial not reviewed by appellate court). Pursuant to Rule 1.3(a), Ariz. R. Crim. P., the ten days began to run on

¹Although the state concedes it did not object below to the timeliness of Howerton’s motion, jurisdictional challenges may be raised for the first time on appeal. *See State v. Vargas-Burgos*, 162 Ariz. 325, 327, 783 P.2d 264, 266 (App. 1989).

March 21, the day after the jury rendered its verdict. Because day ten, March 30, was a Sunday, Howerton had through Monday, March 31, to file the motion. Because he did not file his motion for new trial until April 1, it was untimely, and the trial court lacked jurisdiction to rule on it. *See Wagstaff*, 161 Ariz. at 70, 775 P.2d at 1134.

¶4 Because there is no valid order for us to review and Howerton raises no other issues,² his convictions and sentences are affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge

²Although Howerton's notice of appeal purported to raise several appellate issues, his brief addressed only the denial of his motion for new trial.